

The Hon. Michael P. Shea
(via email Emily_Gait@ctd.uscourts.gov)

November 9, 2020

Re: *Bracho v. The Kent School Corporation*, 3:18-cv-00021-MPS (supplement to 11-6-20 letter)

Dear Judge Shea:

Defendant acted with diligence to depose Dr. Jupiter, but it was stymied because Plaintiffs failed to produce the records. Dr. Jesse Jupiter's deposition was noticed during the discovery period, but the parties agreed to put it off to allow both Dr. Jupiter and counsel to review his full records, which were not produced until 9-25-20. These records pertain to Plaintiff Danilo Bracho's arm/wrist surgery performed by Dr. Jupiter at Mass. Gen. Hospital (MGH) in July 2019.

Plaintiff's counsel suggests defendant has had Dr. Jupiter's records for "more than a year." This is false, and another instance of Plaintiff providing only select records, despite a continuing obligation to provide all records (for example, Plaintiff produced about 2500 pages of CCMC records, represented to be complete, but on later subpoena by Defendant, CCMC produced over 6000 pages). This is now a clear pattern. Plaintiff provided about 91 pages of MGH records on or about 10-11-19. Defendant has now determined these records did not include, importantly, certain flow sheets, nursing notes, and labs, that reflect on Plaintiffs' claim (for example, no records were previously provided from several listed providers, including Denise Kane, R.N., Bonnie Spencer, R.N., Maureen Mahan, R.N., and Yodit Habtemariam, among others, and other records note "pain score" information that was not previously produced). As an example, attached are two pages from the MGH production including references to the above providers, whose names are not found in Plaintiff's production (and which indicate the possibility of treatment beyond the date range suggested in Plaintiff's production).

Leary of Plaintiff's prior incomplete productions, before deposing Dr. Jupiter, Defendant subpoenaed records from MGH on 8-5-2020, well before the 9-30-20 discovery cut-off, but needed authorizations, and to pursue production of the records through Dr. Jupiter's counsel, and MGH. Ultimately, MGH produced 272 pages of records on 9-25-20. Counsel had already worked jointly with Dr. Jupiter's counsel, agreeing to hold off his deposition so he would have at least a week to review them before his deposition, which had been set for 9-28-2020. Upon receipt on 9-25-20, counsel forwarded the records to Plaintiff and Dr. Jupiter's counsel, who sought provisionally to move the deposition to 9-29-20, still within the discovery period, but Plaintiff's counsel was unavailable, and left for a vacation and was not back until 10-15-2020. He agreed to put off the deposition, and a "meet and confer" on all the discovery disputes, until his return on 10-15-20 (in the interim, the Court *sua sponte* moved the Joint Trial Memorandum date to accommodate a mediation). In sum, the undersigned has diligently pursued the records and deposition, but was obstructed by Plaintiff's counsel. Defendant should be allowed to depose Dr. Jupiter, and question him about the surveillance, the confidentiality of which Plaintiff waived in David Bracho's recent deposition.

Very Truly Yours /s/ John C. Pitblado (cc: Antonio Ponvert III, Esq., APonvert@koskoff.com)